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No. 664

In the Supreme Court of the United States

OCTOBER TERM, 1957

MANUEL RODRIGUEZ TRADING CORPORATION AND MANUEL RODRIGUEZ, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

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INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes, regulations, and contract provisions involved	2
Statement	2
Argument	5
Conclusion	11

CITATIONS

Cases:	
Norton Clapp v. *United States*, 127 C. Cls. 505, certiorari denied, 348 U. S. 834	8
Rex Trailer Co. v. *United States*, 350 U. S. 148	9, 10
United States v. *Bound Brook Hospital, Inc.* (C. A. 3, No. 12,303, decided January 14, 1958)	9, 10
Statutes:	
Merchant Ship Sales Act of 1946, 60 Stat. 41, 50 U. S. C. App. (1946 ed.) 1735, *et seq.*:	
Sec. 1736 (d) (1) (2) (3) (4)	3, 12
Sec. 1736 (g)	14
Sec. 1737 (a)	14
Sec. 1739 (a) (1) (2) (3) (4)	14
Sec. 1739 (b)	15
Shipping Act of 1916, as amended, 39 Stat. 728, 46 U. S. C. (1946 ed.) 801, *et seq.*:	
Sec. 808	16
Sec. 839	8, 17
Miscellaneous:	
2 Restatement, Contracts (1932), § 470	7
Restatement, Restitution (1937):	
Sec. 8	7
Sec. 151	7, 8
Sec. 151, comment f	10
Sec. 202	7

Miscellaneous--Continued

Page

Senate Joint Resolution 173, Public Law 423, 80th Cong., 2d Sess., 62 Stat. 38, 50 U. S. C. App. 1739, Historical Note 4, 9, 18

United States Maritime Commission General Order No. 60, 11 Fed. Reg. 4459, April 23, 1946:

Sec. 299.1 (h) 18

Sec. 299.1 (i) 19

United States Maritime Commission General Order No. 60, Supplements 1 and 3, 11 Fed. Reg. 4702, 8972 19

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OPINION BELOW

The opinion of the Court of Claims (Pet. App. A) is reported at 153 F. Supp. 442.

JURISDICTION

The judgment of the Court of Claims was entered on July 12, 1957 (R. 69), and timely motions for rehearing by both parties were denied on October 9, 1957 (R. 110). The petition for a writ of certiorari was filed on December 14, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1255 (1).

QUESTIONS PRESENTED

1. Whether petitioner, having procured two ships from the Maritime Commission on the basis of deliberate misrepresentations that he was purchasing these vessels as an American citizen for use under the United States flag, when in fact he was acting at all times as the agent of the Argentine Government, is liable for class allowances, cost of desirable features, and unrecouped cost of repairs which would have been charged by the Commission to a non-citizen purchaser.

2. Whether there is sufficient evidence to support the determination of the court below fixing the amount due for unrecouped repairs at $49,852.01.

STATUTES, REGULATIONS, AND CONTRACT PROVISIONS INVOLVED

The pertinent provisions of the statutes, regulations, and contract provisions involved are set out in the Appendix, *infra*, pp. 12–20.

STATEMENT

The facts as found by the Court of Claims are set out in detail in the Statement of our cross-petition for a writ of certiorari, which we are filing simultaneously with this brief in opposition to the petition in No. 664. For the purposes of this brief, the facts may be briefly summarized as follows:

Petitioner [1] brought suit in the court below to re-

[1] Since petitioner Manuel Rodriguez Trading Corporation is essentially the *alter ego* of petitioner Manuel Rodriguez, the court below used the term "plaintiff" to refer either to the corporation or to Manuel Rodriguez personally, and we follow the same usage in this brief with the term "petitioner."

cover amounts paid to the United States Maritime Commission under an agreement by which the Commission then approved petitioner's sale of the tankers *Capitan* and *Sugarland* to the Argentine Naval Commission and their transfer to Argentine registry and flag (Pet. App. A–3). Petitioner had earlier purchased the tankers from the Maritime Commission by a contract dated April 6, 1948, and as a citizen-purchaser, had been allowed price reductions of $135,442.79 under Section 3 (d) (1) of the Merchant Ship Sales Act of 1946, 50 U. S. C. App. (1946 ed.) 1736 (d) (1), *infra*, p. 12, representing the cost which would be required to enable the Commission to deliver the vessels in class (Pet. App. A–3). On December 7, 1948, the Maritime Commission approved the sale and transfer of the vessels to Argentine registry on the condition that petitioner pay to the Commission the amount of these price reductions, together with the sum of $28,756.81, which petitioner was obligated to pay under his contract of April 6, 1948, "for desirable features" not found in standard vessels (Pet. App. A–4).

Petitioner contended in the court below, *inter alia*, that the Maritime Commission did not have authority to condition its approval of the sale or transfer to the Argentine Naval Commission upon repayment of the price reductions and that, under the statutory formula provided by the Merchant Ship Sales Act, he was not liable for the cost of the desirable features (Pet. App. A–1–2). The United States denied liability for this money, and also counterclaimed for damages, alleging that petitioner had procured the two tankers

from the Maritime Commission, and obtained various price reductions thereon, on the basis of misrepresentations that he was acquiring the tankers as a United States citizen for operation under American flag and registry, but that, knowing that sales to noncitizens were expressly prohibited after March 1, 1948, by Public Law 423, *infra*, p. 18, petitioner was in fact acquiring the tankers in order to sell and transfer them to the Argentine Naval Commission for foreign operation (Pet. App. A–4).

The Court of Claims found the facts to be substantially as claimed by the Government. It found that petitioner had "procured the tankers and obtained the price reductions or class allowances on the basis [of] representations that [he] was acquiring the tankers as a United States citizen for operation under the United States flag and registry, knowing that the sale to non-citizens was prohibited under Public Law 423," but that in fact petitioner was acting at all times as agent of the Argentine Naval Commission and had acquired the vessels in order to sell and transfer them to a non-citizen (Pet. App. A–11–12). The court therefore held that, since a non-citizen would have had to pay the class allowances and cost of desirable features if it had been permitted to purchase the ships directly from the Commission, petitioner should also pay these sums, and hence could not recover on his claim (Pet. App. A–13). The court found (Pet. App. A–11) that, even after payment of these amounts, petitioner was left with a gross profit on the transactions of at least $153,959.29 (in addition to some $35,000 which petitioner received but failed to account for). How-

ever, despite the findings concerning petitioner's misrepresentations and his knowing violation of Public Law 423, the court refused to make a "specific finding of fraud," and held that, in the absence of such a finding, petitioner would not be chargeable under a constructive trust for the proceeds received from his sale of the tankers (Pet. App. A–13).[2] The court therefore limited the recovery of the United States on its counterclaim to $49,852.01, the cost of unamortized repairs which would have been charged to a non-citizen purchaser (Pet. App. A–14).

ARGUMENT

Petitioner's attack on the decision below is totally without merit. As we point out more fully in our cross-petition for a writ of certiorari, the facts as found by the Court of Claims not only warrant the denial of petitioner's claims but also require a far

[2] The court stated (Pet. App. A–13):

> Under these circumstances we believe plaintiff is in the same position as the Argentine Naval Commission, a non-citizen, would have been had it negotiated and purchased the tankers. That is to say, the Maritime Commission had every right to charge the Argentine Naval Commission more for the vessels than it could have charged a citizen, and there is no reason to believe that such a charge would not have been made. Thus the Maritime Commission, by reason of the representation of plaintiff, lost the difference in sale price and, if fraud were present, we could think of no reason why plaintiff should be permitted to profit thereby. However, no specific finding of fraud is made in this case and in the absence thereof, plaintiff would not be chargeable under a constructive trust for the proceeds received from the sale to the Argentine Naval Commission. Restatement of the Law of Restitution, Ch. 13, sec. 202; *United States* v. *Newbury Mfg. Co.*, 36 F. Supp. 6 2.

more substantial award to the United States on its counterclaim than the amount set by the court. In any event, the court's express findings that petitioner procured the *Sugarland* and *Capitan* through deliberate misrepresentation clearly entitle the Government at least to the cost allowances, desirable features, and unrecouped repairs which would have been chargeable to a non-citizen purchaser. Moreover, contrary to petitioner's contention, there is ample evidence to support the court's computation of the cost of these repairs. Petitioner thus has no valid quarrel with the result below and he raises no substantial question warranting this Court's review. His petition should plainly be denied.

1. The Court of Claims was fully justified in denying petitioner's claims and in awarding affirmative judgment to the United States for the unrecouped cost of repairs on the *Sugarland*. The court expressly found—as petitioner himself frankly acknowledges (Pet. 3)—that petitioner induced the Maritime Commission to sell him the *Sugarland* and *Capitan* by his representations that they were purchased for operation under the United States flag, but that in fact petitioner was acting as agent for the Argentine Naval Commission and intended throughout to accomplish the transfer of the tankers to that foreign agency. Instead of being satisfied, however, with the fact that he has been permitted to retain substantially all of the fruits of his wrongdoing,[3] petitioner continues to

[3] Even after satisfying the Government's judgment of $49,852.01, petitioner is left with a profit on these transactions of more than $100,000, in addition to the balance of some $35,000

press his claim for additional profits as if these transactions had been legitimate from the outset. Without laboring his failure to take account of the reprehensible nature of his scheme to wrong the Government, it is sufficient to point out that the only fault with the decision below was that it did not go far enough; notwithstanding the court's refusal to make a "specific finding of fraud" (Pet. App. A), the specific facts which it did find clearly establish petitioner's liability to respond in damages for his intentional misrepresentations by which he induced the Maritime Commission to sell him the tankers. See our Cross-Petition for Certiorari; 2 Restatement, Contracts (1932), § 470; Restatement, Restitution (1937), §§ 8, 151, 202.

Nor is there any question but that each of the three items involved in this petition—the class allowances, the charge for desirable features, and the unrecouped cost of repairs—was properly included as an element of the Government's damages. These sums were deductions from the actual value of the vessels, which only a bona fide citizen-purchaser would have been excused from paying. As the Court of Claims found (Pet. App. A-12–13), "[h]ad the Argentine Naval Commission been permitted to purchase the tankers, certainly the United States could have exacted the $135,142.79 [for class allowances] and could further have charged for the desirable features." Likewise, the court found that the unre-

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which was returned to him by the Maritime Commission from the $200,000 check of the Argentine Naval Commission deposited in December 1948, and which petitioner presumably retained.

couped cost of repairs, which petitioner as a citizen-purchaser was excused from paying, would have been recovered in a sale to a non-citizen (Pet. App. A–14). Petitioner avoided paying these sums by deliberately misrepresenting that he was purchasing the tankers as a citizen for use under United States flag; as part of the fruits of his wrongful conduct, they are plainly recoverable by the Government. Restatement, Restitution, § 151.[4]

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[4] We might point out that, even if petitioner's transactions were legitimate, he would have no basis for recovering the $135,442.79 at first deducted as for class allowances, but later collected by the Maritime Commission as a condition to its approval of the transfer of the tankers to Argentina. Section 41 of the Shipping Act of 1916, 46 U. S. C. (1946 ed.) 839, *infra*, pp. 17–18, provides *inter alia*, that "[w]henever * * * the approval of the commission is required to render any act or transaction lawful, such approval may be accorded either absolutely or upon such conditions as the Commission prescribes." The Maritime Commission was justified in prescribing payment of these previously-allowed price deductions, which petitioner had received solely because of his representations that the ships were for use under United States flag, as a condition to their transfer to Argentine registry.

Petitioner's reliance upon *Norton Clapp* v. *United States*, 127 C. Cls. 505, certiorari denied, 348 U. S. 834, as prohibiting imposition of this condition is plainly unfounded. As the court below held in distinguishing the *Clapp* case (Pet. App. A–12), the $7,500 charge which the Commission there imposed as "consideration" for releasing the owner of vessels acquired from the Commission of his obligation to operate the ships under United States registry "had nothing to do with either the restriction or the removal and the $7,500 charge was irrelevant" (*ibid.*). In the present case, this sum of $135,442.79 was anything but irrelevant; it represented precisely the amount which petitioner "as a citizen saved under the floor price" (Pet. App. A–13). Since the sole purpose of this deduction was to cover the cost of bringing the vessels into class for operation under United States flag, the payment of this money was obviously an appropriate condition for authorizing transfer of the ships to foreign registry.

There is no substance to petitioner's argument (Pet. 2, 3-4, 8-9) that, since the Maritime Commission was barred by Public Law 423 from selling the tankers directly to a non-citizen purchaser, it could not validly "charge" him these amounts as an agent of the Argentine Government. Since petitioner himself was the one who knowingly violated the statute, he cannot rely upon this violation as a defense to the consequences of his own act. In any event, the decision of the Court of Claims makes clear that petitioner was not being "charged" such amounts, but rather that they were being awarded to the Government as *damages* for his misrepresentations. Thus, whether or not the Maritime Commission could lawfully have sold the tankers to Argentina is now irrelevant; the fact is that petitioner realized a considerable profit by wrongfully inducing the Government to sell him the tankers at far less than their actual value.[5] If petitioner were permitted to recover the amounts in dispute (totalling more than $200,000), he would have realized a total profit on his transaction of more than $300,000 (see

[5] The Court of Claims found that the two vessels, which were built in 1945 at a total cost of $3,548,076, had a replacement value in 1947 of $4,080,287.40 (Pet. App. A-11). The Maritime Commission received from petitioner a total of $1,802,836.81 for the vessels (*including* the charges for desirable features and the repayment of the class allowances), or $2,777,450.29 less than their replacement cost (*ibid.*). In addition to the loss sustained by selling the tankers at this low price, the Government also suffered compensable loss in the resulting defeat of its program for operation of these surplus vessels as part of the United States Merchant Marine. See *Rex Trailer Co.* v. *United States*, 350 U. S. 148, 153; *United States* v. *Bound Brook Hospital, Inc.* (C. A. 3, No. 12,303, decided January 14, 1958).

note 3 *supra*, pp. 6–7), *all* of which could be recovered from him under equitable principles of restitution. See Restatement, Restitution (1937), § 151, com. f; *Rex Trailer Co.* v. *United States*, 350 U. S. 148, 153, footnote 6; *United States* v. *Bound Brook Hospital, Inc.*, *supra*; see our Cross-Petition for Certiorari. Surely, he cannot be heard to complain of the court's decision to assess damages in a lesser amount.

2. Contrary to petitioner's second contention (Pet. 9–11), there is an abundance of evidence to support the court's determination that the unrecouped cost of repairs on the *Sugarland* amounted to $49,852.01. The facts are set forth in the court's finding 32 (Pet. App. A–42), which was also the commissioner's finding 32, and they are fully supported by competent evidence. See, *e. g.*, Pimper, Tr. 229, 230, 240–241; Fetsko, Tr. 248–249; Langley, 250–251; Hutchison, Tr. 196–205; Deft. Exs. 95, 96 Id.; 100, 101, 102, Id. Although, at the trial, petitioner objected to certain parts of the evidence on the ground that paragraphs 13, 14, and 15 of the *answer* did not mention repairs, that petitioner's corporation's "agreement" did not make it liable for repairs, and that "I absolutely do not know what this claim is about" (Tr. 197), such objections were without merit. The Government's amended counterclaim had specifically claimed "the net sum of $49,852 incurred by defendant for repairs on the tanker *Sugarland* * * * which costs were not charged" because of petitioner's misrepresentations. The "agreement" for the sale of the *Sugarland* did not provide for payment of repairs to that vessel because, as a result of petitioner's deliberate misrepresenta-

tions the Maritime Commission was innocently dealing with him as a citizen-purchaser.

In view of finding 32, it is evident that the commissioner and the court, after full consideration, rejected petitioner's unfounded objections and concluded that the evidence was competent and the proof adequate. Petitioner has made no attempt to show the contrary, either by supporting the validity of his objections or by contesting on the merits the accuracy of the sum arrived at by the court. Having elected to interpose, and to stand on, erroneous objections rather than to meet the Government's proof, he cannot now complain of his own error.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari in this case should be denied. In the event the Court decides to grant the petition, however, it is respectfully requested that, for the reasons there stated, the Government's cross petition be granted as well.

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FEBRUARY 1958.

APPENDIX

Statutes, Regulations and Contract Provisions Involved

1. Statutory Provisions

The Merchant Ship Sales Act of 1946, 60 Stat. 41, 50 U. S. C. App. (1946 ed.) 1735, *et seq.*, provided in pertinent part as follows (as it appears in the United States Code):

§ 1736.

* * * * *

(d) "Statutory sales price", as applied to a particular vessel, means, in the case of a dry-cargo vessel, an amount equal to 50 per centum of the prewar domestic cost of that type of vessel, and in the case of a tanker, such term means an amount equal to 87½ per centum of the prewar domestic cost of a tanker of that type, such amount in each case being adjusted as follows:

(1) If the Commission is of the opinion that the vessel is not in class, there shall be subtracted the amount estimated by the Commission as the cost of putting the vessel in class.

(2) If the Commission is of the opinion that the vessel lacks desirable features which are incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be lower if the standard vessel had also lacked such features, there shall be subtracted the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(3) If the Commission is of the opinion that the vessel contains desirable features which are not incorporated in the standard vessel used for the purpose of determining prewar domestic cost, and that the statutory sales price (unadjusted) would be higher if the standard vessel had also contained such features, there shall be added the amount estimated by the Commission as the amount of such resulting difference in statutory sales price.

(4) There shall be subtracted, as representing normal depreciation, an amount computed by applying to the statutory sales price (determined without regard to this paragraph) the rate of 5 per centum per annum for the period beginning with the date of the original delivery of the vessel by its builder and ending with the date of sale or charter to the applicant in question, and there shall also be subtracted an amount computed by applying to the statutory sales price (determined without regard to this paragraph) such rate not in excess of 3 per centum per annum in the case of a vessel other than a tanker, and not in excess of 4 per centum per annum in the case of a tanker, for such period or periods of war service as the Commission determines will make reasonable allowance for excessive wear and tear by reason of war service which cannot be or has not been otherwise compensated for under this subsection.

No adjustment, except in respect of passenger vessels constructed before January 1, 1941, shall be made under this Act which will result in a statutory sales price which (1) in the case of dry-cargo vessels (except Liberty type vessels) will be less than 35 per centum of the domestic war cost of vessels of the same type, (2) in the case of any Liberty type vessel will be less than 31½ per centum of the domestic war cost of vessels of such type, or (3) in the

case of a tanker will be less than 50 per centum of the domestic war cost of tankers of the same type. For the purposes of this Act, except section 5, all Liberty vessels shall be considered to be vessels of one and the same type.

* * * * * *

(g) "Citizen of the United States" includes a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act of 1916, as amended. The term "affiliated interest" as used in sections 9 and 10 of this Act includes any person affiliated or associated with a citizen applicant for benefits under this Act who the Commission, pursuant to rules and regulations prescribed hereunder, determines should be so included in order to carry out the policy and purposes of this Act.

§ 1737.

(a) Any citizen of the United States may make application to the Commission to purchase a war-built vessel, under the jurisdiction and control of the Commission, at the statutory sales price. If the Commission determines that the applicant possesses the ability, experience, financial resources, and other qualifications, necessary to enable him to operate and maintain the vessel under normal competitive conditions, and that such sale will aid in carrying out the policies of this Act, the Commission shall sell such vessel to the applicant at the statutory sales price.

* * * * * *

§ 1739.

(a) Any person not a citizen of the United States may make application to the Commission to purchase a war-built vessel (other than a P–2 type or other passenger type and other than a Liberty type collier or tanker), under the jurisdiction and control of the Commission. If the Commission determines—

(1) that the applicant has the financial resources, ability, and experience necessary to enable him to fulfill all obligations with respect to payment of any deferred portion of the purchase price, and that sale of the vessel to him would not be inconsistent with any policy of the United States in permitting foreign sales under section 9 of the Shipping Act, 1916, as amended; and

(2) after consultation with the Secretary of the Navy, that such vessel is not necessary to the defense of the United States; and

(3) that such vessel is not necessary to the promotion and maintenance of an American merchant marine described in section 2; and

(4) that for a reasonable period of time, which in the case of tankers and "C" type vessels shall not end before ninety days after publication of the applicable prewar domestic cost in the Federal Register under subsection 3 (c) of this Act, such vessel has been available for sale at the statutory sales price to citizens of the United States, or for charter under section 5 to citizens of the United States, and that no responsible offer has been made by a citizen of the United States to purchase or charter such vessel;

then the Commission is authorized to approve the application and sell such vessel to the applicant at not less than the statutory sales price. In case of application submitted by a citizen of the Commonwealth of the Philippines, paragraph (4) of this subsection shall not apply. Notwithstanding paragraph (4) of this subsection, not to exceed ten "C" type vessels, except C–3's, may be sold to noncitizens at any time after such date of publication at not less than the statutory sales price.

(b) Notwithstanding any other provision of law, no war-built vessel shall be sold to any person not a citizen of the United States, except in accordance with subsection (a), or upon

terms or conditions more favorable than those at which such war-built vessel is offered to a citizen of the United States, but where the vessel so sold is being transferred to foreign register and flag, the mortgage securing the unpaid balance of the purchase price and interest thereon shall contain provisions according to such mortgage the priorities over other liens and encumbrances accorded such mortgages on merchant vessels under the laws of such registry and flag.

The Shipping Act of 1916, as amended, 39 Stat. 728, 46 U. S. C. (1946 ed.) 801, *et seq.*, provides in pertinent part as follows (as it appears in the United States Code):

§ 808.

Any vessel purchased, chartered, or leased from the United States Maritime Commission, by persons who are citizens of the United States, may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: *Provided,* That foreign-built vessels admitted to American registry or enrollment and license under this chapter, and vessels owned by any corporation in which the United States is a stockholder, and vessels sold, leased, or chartered by the commission to any person a citizen of the United States, as provided in this chapter, may engage in the coastwise trade of the United States while owned, leased, or chartered by such a person.

Every vessel purchased, chartered, or leased from the commission shall, unless otherwise authorized by the commission, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein

as owner, in whole or in part, or hold any mortgage, lien, or other interest therein.

Except as provided in section 1181 of this title, it shall be unlawful, without the approval of the United States Maritime Commission, to sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to any person not a citizen of the United States, or transfer or place under foreign registry or flag, any vessel or any interest therein owned in whole or in part by a citizen of the United States and documented under the laws of the United States, or the last documentation of which was under the laws of the United States.

Any such vessel, or any interest therein, chartered, sold, transferred, or mortgaged to a person not a citizen of the United States or placed under a foreign registry or flag, or operated, in violation of any provision of this section shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than $5,000, or to imprisonment for not more than five years, or both.

* * * * *

§ 839.

Whenever by section 808 or 835 of this title the approval of the commission is required to render any act or transaction lawful, such approval may be accorded either absolutely or upon such conditions as the commission prescribes. Whenever the approval of the commission is accorded upon any condition a statement of such condition shall be entered upon its records and incorporated in the same document or paper which notifies the applicant of such approval. A violation of such condition so incorporated shall constitute a misdemeanor and shall be punishable by fine and imprison-

ment in the same manner, and shall subject the vessel, stocks, bonds, or other subject matter of the application conditionally approved to forfeiture in the same manner, as though the act conditionally approved had been done without the approval of the commission, but the offense shall be deemed to have been committed at the time of the violation of the condition.

Whenever by this chapter the approval of the commission is required to render any act or transaction lawful, whoever knowingly makes any false statement of a material fact to the commission, or to any member thereof, or to any officer, attorney, or agent thereof, for the purpose of securing such approval, shall be guilty of a misdemeanor and subject to a fine of not more than $5,000 or to imprisonment for not more than five years, or both.

Senate Joint Resolution 173, Public Law 423, 80th Cong., 2d Sess., 62 Stat. 38, 50 U. S. C. App. 1739, Historical Note, provides in pertinent part as follows:

(b) Notwithstanding the provisions of subsection (a), no contract of sale under section 6 of the Merchant Ship Sales Act of 1946 shall be made after March 1, 1948; and nothing contained in this or any other Act shall be deemed to authorize the United States Maritime Commission to charter any war-built vessel (as defined in the Merchant Ship Sales Act of 1946) to any person who is not a citizen of the United States (as defined in the Merchant Ship Sales Act of 1946).

2. Regulations

United States Maritime Commission General Order No. 60, 11 Fed. Reg. 4459, April 23, 1946, provides in pertinent part:

§ 299.1

* * * * *

(h) *Citizen of the United States.* "Citizen of the United States" includes a corporation,

partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended, and section 905 (c) of the Merchant Marine Act, 1936, as amended. The Secretary of the Commission will furnish, on request, copies of memoranda dealing with citizenship.

(i) *Affiliated interest.* The term "affiliated interest" shall include any person or concern that directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the applicant. The term "control" (including the terms "controlled by" and "under common control with") as used in this paragraph means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the applicant, whether through ownership of voting securities, by contract, or otherwise.

* * * * *

General Order No. 60, Supplements 1 and 3, 11 Fed. Reg. 4702, 8972 set forth the computations of the domestic war cost and the floor price of T1-M-BT tankers.

3. Contract Provisions

The contract appears as an Appendix to the original petititon in the Court of Claims filed on June 19, 1951. It provides:

* * * * *

ARTICLE 1. *Agreement to Purchase.* Subject to the provisions hereinafter set forth and to all applicable provisions of the Act and Regulations, whether specifically referred to or not, the Buyer agrees to purchase from the Commission and the Commission agrees to sell to the Buyer the vessel(s).

It is understood and agreed that if for any reason the vessel(s) cannot be delivered by the Commission to the Buyer as herein provided, similar vessel(s) acceptable to the Buyer, may,

pursuant to an addendum to this agreement, be delivered by the Commission in substitution therefor.

* * * * *

ARTICLE 4. *Purchase Price(s) of the Vessel(s).* The Commission has determined, pursuant to the provisions of the Act, giving effect to all adjustments (except for the absence or presence of desirable features as defined in clauses (2) and (3) of Sec. 3 (d) of the Act) permitted by the Act and applicable to the vessel, that the purchase price thereof shall be as set forth in Exhibit "A" attached hereto and forming a part hereof.

* * * * *

ARTICLE 9. *Documentation of the Vessel(s).* The (each) vessel shall be documented under the laws of the United States by the Buyer immediately after sale and delivery thereof to the Buyer.

* * * * *

EXHIBIT "A"

* * * * *

I. Purchase Price(s) of the Vessel(s). * * *

The Buyer agrees, if it shall be determined by the Commission upon examination of the (each) vessel, that the vessel lacks or contains desirable features as defined in clauses (2) and (3) of Sec. 3 (d) of the Act, then such purchase price shall be decreased, within the limits of the floor price of the vessel, or increased, by such amounts, if any, as may be determined by the Commission pursuant to said clauses.

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